IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

JIMMY DEAN BALENTINE, Register No. 516421,)	
Plaintiff,)	
v.)	No. 04-4012-CV-C-NKL
BRUCE SHOCKLEY, et al.,)	
Defendants.)	

ORDER

On January 30, 2006, plaintiff filed a notice of appeal and on February 27, 2006, a request for leave to proceed in forma pauperis on appeal. Plaintiff's notice of appeal triggers the assessment of a \$255.00 appellate filing fee and constitutes consent for the deduction of that fee from his inmate account. 28 U.S.C. § 1915; Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997).

An appeal in forma pauperis, however, may not be taken if the court certifies, in writing, that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). The court finds plaintiff's appeal is not taken in good faith because summary judgment was properly granted on behalf of defendants. There was no probative evidence to counter the evidence of apparent physical impossibility of plaintiff's claims; and the undisputed evidence was that around the time of the alleged torture, plaintiff was suffering from delusions. No reasonable jury would believe plaintiff's claims and, therefore, could not find for plaintiff at trial. Therefore there was no genuine issue for trial and, as a matter of law, defendants were properly granted summary judgment.

Although the district court is denying plaintiff leave to proceed in forma pauperis on appeal, plaintiff may still seek to proceed under 28 U.S.C. § 1915, by filing with the appellate court a timely motion under Rule 24(a) of the Federal Rules of Appellate Procedure. Plaintiff also may pursue his appeal as a regular appellant, without the benefit of 28 U.S.C. § 1915, by paying the full \$255.00 appellate filing fee to the clerk of the district court within thirty days. If

plaintiff does not file a Rule 24(a) motion or pursue his appeal as a regular appellant, his appeal may be dismissed by the appellate court.

The denial of in forma pauperis status by the district court does not relieve plaintiff of the

obligation to pay the \$255.00 appellate filing fee. Accordingly, plaintiff's financial

documentation has been reviewed and an initial filing fee has been calculated.

On January 31, 2006, plaintiff filed a motion, pursuant to Fed. R. Civ. P. 60(b), for relief

from the judgment entered on December 7, 2005. Rule 60(b) "provides for extraordinary relief

which may be granted only upon an adequate showing of exceptional circumstances." Reyher v.

Champion, 975 F.2d 483, 488 (8th Cir. 1992) (quoting United States v. Young, 806 F.2d 805,

806 (8th Cir. 1986)). No exceptional circumstances justifying relief have been shown, and

plaintiff's motion is denied.

IT IS, THEREFORE, ORDERED that plaintiff's motion for relief from the judgment is

denied [74]. It is further

ORDERED that plaintiff's appeal is not taken in good faith and plaintiff is denied leave

to proceed in forma pauperis on appeal [80]. It is further

ORDERED that plaintiff's initial filing fee is calculated at \$19.60 and the Missouri

Department of Corrections is directed to deduct from plaintiff's inmate account, and forward to

the court, the initial filing fee and installment payments, in accord with the provisions of 28

U.S.C. § 1915, until the \$255.00 appellate filing fee is paid in full.

NANETTE K. LAUGHREY

United States District Judge

Dated: April 23, 2006 Jefferson City, Missouri